

## REMARKS

5 Examiner in an office action dated 8/22/2006 had required restriction to one of the claim groups as follows:

I. Claim 1-29, 32-37, and 41-50 drawn to a payment system between a customer and merchant, classified in class 705, subclass 40.

10 II. Claims 30-31 drawn to a payment card for a payment transaction between a customer and a merchant, classified in class 705, subclass 41.

III. Claim 38-40 drawn to a cash withdraw system between a customer and an ATM machine, classified in class 705, subclass 43.

15 In response, Applicant had elected the claim group I, as identified above for this application, and had withdrawn claim groups II and III from this application by canceling these claims from this application.

In an office action dated 5/31/2007, examiner has further required restriction within claim group 1 as follows.

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I. Claim 1-20 drawn to a payment system between a customer and merchant, classified in class 705, subclass 40.

25 II. Claims 21, 24-29 drawn to a payment system for a private and secure transaction between a customer and a merchant, classified in class 705, subclass 16.

III. Claims 32-37 drawn to a payment system for private and secure payment transaction between a customer and a merchant, classified in class 235, subclass 380.

30 IV Claim 41, 45-50 drawn to a private and secure payment system between two parties, classified in class 705, subclass 40.

Applicant in response had elected claims 1 to 20 which are pending in this application.

5           Applicant wishes to make on record prior art that was identified in applicant's co-pending application serial number 09/891,913, Art Unit 3692, filed: 06/26/2001, For, Method And Apparatus For A Payment Card System, Examiner: Monfeldt, Sarah M., related to security of credit card payment transactions.

10           Applicant also wishes to make on record prior art that was identified in applicant's co-pending application serial Number 10/091,882, Art Unit 3692, Filed:03/06/2002, for: Method and Apparatus for Restaurant Payment System, Examiner: Maguire, Lindsay M. related to security of payment transaction for a restaurant merchant.

15           Applicant also wishes to make on record prior art that was identified in applicant's co-pending application serial number 10/100,380, Art Unit 3625, filed: 03/18/2002, For, Method And Apparatus For An Online Subscription System, Examiner: Dunham, Jason B., related to security of payment transactions for online subscription services payment.

20           Applicant also wishes to make on record prior art that was identified in the applicant's issued US patent 7,254,560, issued on 8/7/2007, application number 10/014,040, filed December 10, 2001, titled Method and Apparatus for an integrated identity security and payment system, related to security of identity data during payment transactions.

25           Examiner in an OA dated 9-19-2007 has rejected claims 1 to 20 under the obviousness rejection 37 CFR §103(a) as obvious over Treyz et al and in view of Linehan, some further in view of Lawlor and some in view of Foth

Applicant has amended claim 1, 6, 16, 19 and 20. Amendments to claims 6, 16, 19 and 20 merely change the dependency of these dependent claims, now to depend upon claim 1.

5           Amendment to claim 1 better defines the scope of the invention. Amended independent claim 1 and its dependent claims 2 to 20 are not obvious over Treyz in view of Linehan, some in view of Lawlor and some in view of Foth for the following reasons.

10           Treyz teaches method of shopping assistance in a retail establishment using a wireless handheld computing device with a bar code reader or similar interface for creating shopping lists, and interfacing with the merchant systems by wireless to make purchases using such lists, and by paying for these purchases. Treyz teaches payment to merchant using the wireless handheld computing device, wherein the shopper first  
15           transfers his bankcard data to the wireless device by any number of methods (step 161), as described, and then interfaces the wireless device to the merchant system to transfer the bank card data (step 162) to effect a payment to complete the shopping process.

20           Linehan, teaches four party protocol between customer computer, merchant computer, card issuing bank and the merchant acquiring bank. In Linehan, the customer computer sends a start message to merchant computer. Merchant computer replies with a wallet initiation message (having payment amount, order description and time stamp, and a nonce), and a digital certificate of a merchant's acquiring bank. User computer  
25           then logon on to the card issuing bank system and sends the merchant message. Then card issuing bank system authenticates the customer, verifies has money/credit and validates the merchant certificate and the acquiring bank digital certificate. Then card issuing system bank sends an authorization token ( has reference to customer bankcard among other info) with the issuer's signature and the issuer's digital certificate to  
30           customer computer. That authorization token can also be sent to either the customer or the merchant. If sent to customer, he/she forwards it to the merchant. Merchant verifies

the issuing bank's signature and issuing bank digital certificate and authorization token contents to verify that the card issuer bank has authorized the payment. Then merchant completes the sale transaction and then sends a message with the authorization token to acquiring bank to get paid. The acquiring bank contacts the issuing bank with the token and gets paid.

As cited by the examiner, Treyz, col. 17, line 65 to col. 18, line 45 state:

"Handheld computing device may be used for financial transactions. For example, the user may pay for a product in a store by wirelessly conveying information on the user's credit card, debit card, account or other financial information to equipment in the store such as a cash register with wireless financial transaction capabilities."

"At step 160, handheld computing device 12 may be used to provide the user with an opportunity to provide financial information to hand held computing device 12 that is to be used in a financial transactions. For example..."

Col. 18, lines 4 to 21 define different ways such financial information may be transferred to the wireless device.

"At step 162, the handheld computing device may be used to provide the user with an opportunity to use the financial information that was provided to handheld computing device 12 in a financial transactions. For example..."

Col 18, lines 25 to 40 define various ways how the financial info in the device stored in step 160 is used.

Lines 41 to 45 describe how the user would protect his financial info in the hand held such as password and use of smart card to verify the customer to the handheld device.

It is clear from the above, what Treyz is teaching, is a handheld computing device with wireless capability that stores financial info and how such info is wirelessly transferred to the Merchant sales terminals for a payment transaction.

In contrast, the present claim 1 is wholly different as an invention to accomplish the security of customer data. Claim 1 element (a) and (b) do not teach or make obvious any of the art of Treyz steps 160 and 162 as described above. More specifically, the distinguishing features of claim 1 over Treyz are:

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Treyz wireless device stores customer bankcard data as in step 161, whereas the claim 1 device is a communication device over a global network that does not store customer bankcard data, instead the central system storing customer bankcard data.

10 Further Treyz teaches facilitating the payment transaction mechanism of transferring bankcard data to the merchant for the merchant to process the transaction using merchant systems, by making it convenient for the user using a handheld device to store in it such bankcard data and transfer it to the merchant sales register terminals. In contrast, claim 1 of the present invention does not teach any such aspect of Treyz.

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In claim 1 of the present invention, specifically element (a) and (b) teach a system, where the merchant system is bypassed by not transferring bankcard data to the merchant systems that is in claim 1 the customer neither stores bankcard data in the wireless handheld device not does it transfer his/her bankcard data to merchant point of sale  
20 systems.

Hence, claim 1, unlike Treyz step 161 handheld wireless device does not store customer financial data and unlike Treyz step 162 handheld wireless device does not transfer such financial data to the merchant sale terminal for payment transaction from  
25 the customer to the merchant. For these reasons, Claim 1 cannot be obvious over Treyz, whereas claim 1 is directed to security and privacy of customer bankcard data and Treyz is directed to customer convenience in using a handheld wireless device for payment transactions.

As cited by the examiner, in Linehan, col. 4, lines 10 to 65, for the statement that the card issuing bank pre-stores the bankcard data, Linehan is distinguishable from Claim 1 for the following reasons:

5 In Linehan, the card-issuing bank is the one, which issued the card to customer, and hence it has bankcard data by virtue of being the card-issuing bank. A card-issuing bank only has data for the debit/credit cards issued to the customer by the card-issuing bank. A card-issuing bank of Linehan is not the same as the third party central system of claim 1. The central system of claim 1, as described in the specification interfaces with  
10 both the customer, and the merchant. The central system also stores both of the customer data and the merchant data, as well as having a transaction database. Thus the central system is independent of both the customer and the merchant. Hence the use of the term "third party" in the claim distinguishes it as neither a customer system nor a merchant system and that is supported in the specification.

15 Further the central system has the ability to pre-store a customer's data multiple cards from different card issuing banks. Hence in claim 1, the user does not connect to the card-issuing bank but to a third party central system, they being inherently different and performing inherently different functions. Hence, for these reasons a card issuing bank and  
20 a third party central system are distinct entities with different functions and they cannot be equated.

Claim 1 is:

1. (currently amended) A payment system between a customer and a merchant that  
25 facilitates a private and secure payment transaction to the merchant comprising:

a. a third party central system; a portable wireless communication device  
that connects to a global computer network; a merchant sales terminal; and a terminal  
identification tag with a displayed terminal identification; the central system, the portable  
30 wireless device and the merchant terminal on a global computer network;

b. the central system pre-stores customer bankcard data, merchant terminal identification data, and is interfaced to directly by the wireless device communicating the merchant terminal identification data and a payment amount, the central system uses the terminal identification data to forward a payment authorization notification to the merchant sales terminal thus bypassing the merchant point of sale terminal system from receiving the customer bank card data for a payment transaction, ~~wherein the terminal identification is used by the central system to forward a payment authorization notification to the merchant sales terminal.~~

Applying Graham v. Deere obviousness test, the scope and content of claim 1 and the prior art Treyz and Linehan is such that those skilled in the Treyz and Linehan art are those skilled in using computing devices and systems for customer convenience related to conducting financial transactions. Applicant submits that those skilled in the Treyz and Linehan art are not skilled in the art of data theft and data security and it would not be obvious to them to protect the data from the merchant systems itself while conducting financial transaction with them.

Under Graham v. Deere test of obviousness, claim 1, for the reasons stated above is not taught or fairly suggested to make them obvious over Treyz in view of Linehan. Hence claim 1 is not obvious over Treyz in view of Linehan. Like wise dependent claims 2 to 20 are not anticipated or obvious.

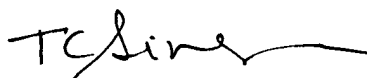
## CONCLUSION

In conclusion, Applicant respectfully asserts that claims 1 to 20 are patentable for the reasons set forth above, and that the application is now in a condition for allowance.

5 Accordingly, an early notice of allowance is respectfully requested. The Examiner is requested to call the undersigned at 310-540-4095 for any reason that would advance the instant application to issue.

Dated this the December 18, 2007

10 Respectfully submitted,



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